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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 17th January 2015

No. 528—li/1(BH-I)-14/2007(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th November 2014 in Industrial Dispute Case No. 28 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Krushna Chandrapur College, Krushna Chandrapur, Mayurbhanj and its Workman Smt. Sabita Mohanty was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 28 OF 2008

Dated the 28th November 2014

Present :

Shri B. C. Rath, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal, Bhubaneswar.

Between :

The Management of
M/s Krushna Chandrapur College,
Krushna Chandrapur, Mayurbhanj. . . First Party—Management

And

Its Workman,
Smt. Sabita Mohanty, . . Second Party—Workman
D/o Late Purna Chandra Mohanty,
At/P.O. Betnoti (Sathilo), Dist. Mayurbhanj.

Appearances :

Shri Subrat Mishra, Adv. . . For the First Party—Management

Shri S. Mohanty, Advocate . . For the Second Party—Workman

AWARD

The Government of Odisha in the Labour & Employment Department, in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act'), have referred the following dispute for adjudication by this Court vide their Letter No. 5123—li/1(BH-I)-14/2007-LE., dated the 30th April 2008 :—

“Whether the termination of services of Smt. Sabita Mohanty, Ex Clerk-*cum*-Typist by the management of Krushna Chandrapur College with effect from the 1st July 2001 is legal and/or justified ? If not, what relief Smt. Mohanty is entitled to ?”

2. Shorn of unnecessary details, the case of the second party workman is that pursuant to the appointment order issued to her vide letter No. 264—KCPC-02/1995, dated the 31st March 1995 she joined under the management as a Clerk-*cum*-Typist and deposited Rs. 18,000 with the management which was a condition for such appointment. It is the specific stand of the second party that she has worked continuously with the management from the 21st March 1995 till the 31st June 2001 without any emoluments. But all of a sudden on the 1st July 2001 she was refused employment without any reason or rhyme. According to her, such action of the management amounts to retrenchment of her service and the same is illegal on account of non-compliance of the provisions of Section 25-F of the Act. She has further asserted in her claim statement that during her continuance under the management she was never proceeded against for any misconduct nor any explanation/show cause was ever called for from her for any dereliction in duty. Termination of her service being contrary to the provisions of the Act, she has claimed for her reinstatement in service with full back wages.

3. The first party management has filed its written statement challenging the maintainability of the case on the ground that the second party is not a 'workman' as per the definition of Section 2(s) of the Act and also on the ground of raising of the dispute by the second party at a belated stage. Admitting about issuance of appointment letter in favour of the second party by the-then Secretary of the Management of the College a stand has been taken that the second party did not join in the post pursuant to such letter and she had not discharged any duty at any point of time and as such no question ever arose towards refusal of service to the second party or dismissal/termination of her service. The management has also insisted the second party to prove her claim of appointment in the College and her continuance in service denying all allegations raised by her. There having no infraction of the provisions of the Act on the part of the first party, the management has prayed to answer the reference in its favour.

4. Basing on the aforesaid pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Did the second party after being appointed by the first party as a Clerk join in her post at any point of time ?
- (ii) Was the services of the second party terminated by the first party on the 1st July 2001 ?
- (iii) Is the termination is legal and/or justified ?
- (iv) What relief the second party is entitled to get ?

5. In order to substantiate their respective stand, while the second party workman has examined herself as W. W. No. 1 and two other witnesses as W. W. Nos. 2 and 3 and filed documents marked Exts. 1 to 7, the first party management examined one Shri Basanta Barik, Clerk-*cum*-Typist and did not chose to adduce any documentary evidence on its behalf.

FINDINGS

6. *Issue Nos. (i) and (ii)*— Since issue Nos. 1 & 2 are inter related to each other for the sake of convenience they are taken up together for consideration.

Though no specific issue has been framed in respect of the plea taken by the first party management that the second party is not a 'workman', the Institution is not an 'industry' and that the reference is not an 'industrial dispute', I feel it just and appropriate to deal the matter before analysing issue Nos. 1 and 2.

7. Undisputedly the first party is an Educational Institution and as per the settled principles of the Hon'ble Apex Court arising out of the case of Bangalore Water Supply and Sewerage Board *vs.* A Rajappa and others, reported in 1978 (36) FLR 266, the definition of 'industry' under the Industrial Disputes Act is held to cover all professions, clubs, educational institutions, co-operatives, research institutions, charitable projects and anything else which could be looked upon as organised activity where there was relationship of employer and employee and goods were produced or service was rendered. In that view of the matter, the first party management being an educational institution for rendering service of imparting education to the students, the management seems to have covered by the definition of 'industry'. The second party claiming herself to be appointed to the post of Clerk under the employment of the first party management can be termed as a 'workman' as contemplated under Section 2(s) of the Act provided she is able to prove employee-employer relationship between her and the first party management. Therefore, the preliminary objection of maintainability of the reference on account of the second party is not covered under the definition of 'workman' as advanced by the first party management does not seem to have substantial force.

8. However, it is to be determined first in order to hold the issue in favour of the second party as to whether she has been able to prove her appointment as a Clerk in the managemnet as well as her continuance in that capacity till her termination on the 30th June 2001 as claimed by her. In this rergard she has relied on the oral as well as documentary evidence. In her oral testimony she has claimed to have joined the Institution of the first party in the post of Clerk-*cum*-Typist on the 21st March 1995 pursuant to letter No. 264—KCPC-2/1995, dated the 21st March 1995 (Ext. 1). According to her, she deposited an amount of Rs. 18,000 before the first party management as a condition precedent. In that regard she has relied on Ext. 2, purported to be a receipt issued by the Secretary of the College. She has further claimed that she was in continuous service and discharging her duty till she was not allowed to discharge her duties and functions with effect from the 30th June 2001 which amounted to termination of her service. It is her claim that she was not paid any salary or emoluments during her period of service. W. W. No. 2 in his oral evidence has claimed that he was the President of the Management of the College from 1991 to 2002 and according to

him, the workman was appointed vide Ext. 1 and pursuant to such appointment she joined in the post and she was discharging her duty from the 21st March 1995 to the 30th July 2001. The other witness for the second party has also supported her claim of appointment as a Clerk and termination of her service. The second party has given much stress on Exts. 1 to 6 to strengthen the oral testimony adduced by the witnesses.

On a close scrutiny of Ext. 1 it is seen that nothing has been mentioned thereon to give a slightest indication that the letter was issued by the Secretary of the Management of the College towards appointment of the second party as a Clerk-cum-Typist. If the contents of the letter is accepted *in toto* it is divulging that the second party was instructed to meet the scribe of the letter as soon as possible. Similarly Ext. 2 reveals receipt of Rs. 18,000 from one Kunja Behari Das as donation for development of the College. There is nothing on the said exhibit to draw an inference that said Kunja Behari Das deposited the amount on behalf of the second party as a condition precedent for her appointment as a Clerk. Likewise on a bare perusal of Exts. 3 to 6 it is seen that none of them is related to any letter of appointment or joining of the second party as a Clerk in the College. Even those letters do not disclose that at any point of time the second party was offered any appointment in the College or the Management of the College had agreed to refund her Rs. 18,000 which she had advanced to the College Development Fund as a condition precedent to her appointment.

The other document on which the second party is harping much to establish her relationship with the College as an employee is Ext. 7, which is purportedly a xerox copy of the order of the Principal assigning duties to the staffs and in the said order the second party along with four others was assigned the duty to remain in charge of Routine, Attendance of Staff and Students. In this connection, it is pertinent to mention here that this piece of document was not produced before this Tribunal till the 16th October 2014 when on recall petition the second party was examined and got exhibited the document. On being cross-examined she is also not able to explain as to why the document was not relied upon and filed earlier. In such view of the matter it cannot be ruled out that it is a unilateral document and for that reason no reliance can be placed on it.

Further, it cannot be overlooked that nowhere in their oral testimonies any of the witnesses including the second party has claimed that she was signing the daily Attendance Register being an employee of the Institution. In normal practice a workman/employee is usually required to give his/her daily attendance in the Attendance Register maintained by the Organisation and such Register is the best piece of evidence to speak as to whether a person is an employee of the Institution or not. The second party has not also taken any step or initiative to cause production of such Attendance Registers for the period from 1995 to 2001 to establish her claim. The Attendance Registers of the Institution for the aforesaid period could have disclosed the employment of the second party as a Clerk-cum-Typist in the Institution. On the other hand, the documents relied upon by her do not give any slightest indication towards her appointment as a Clerk-cum-Typist or her continuance in service in the said post for the period from 1995 to 2001. When there is not a single scrap of paper towards the appointment of the second party as a Clerk in the College, her

joining and continuance in the service for a period of more than six years, her claim is not believable that she was working in the College without being paid any salary/emolument. The second party cannot be treated as a 'workman' simply on a stray admission of the management that she did not join and work in the Institution despite her appointment and as per the settled principle it is the bounden duty of the claimant to lead cogent and credible evidence to establish that she was an employee of the management. Having totally failed to establish the above aspect, I am constrained to hold that there subsists absolutely no employer-employee relationship between the second party and the first party management. In the above situation, no question arises with regard to her termination of service as asserted by her.

Both the issues are accordingly answered against the second party.

9. *Issue Nos. (iii) and (iv)*— In view of the discussions made above under Issue Nos. (i) and (ii), there being no termination of service of the second party, as alleged, she is not entitled to any relief in the present proceeding. Issue Nos. (iii) and (iv) are answered accordingly.

Dictated and corrected by me.

B. C. RATH
28-11-2014
Presiding Officer
Industrial Tribunal, Bhubaneswar

B. C. RATH
28-11-2014
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government